

104TH CONGRESS
1ST SESSION

H. R. 988

To reform the Federal civil justice system.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1995

Mr. MOORHEAD (for himself, Mr. HYDE, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reform the Federal civil justice system.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Attorney Accountabil-
5 ity Act of 1995”.

6 **SEC. 2. AWARD OF ATTORNEY’S FEE TO PREVAILING PARTY**

7 **IN FEDERAL CIVIL DIVERSITY LITIGATION.**

8 Section 1332 of title 28, United States Code, is
9 amended by adding at the end the following:

10 “(e)(1) The district court that exercises jurisdiction
11 in a civil action commenced under this section shall award
12 to the party that prevails with respect to a claim in the

1 action an attorney's fee determined in accordance with
2 paragraph (2). A party shall be deemed to prevail with
3 respect to a claim in an action if—

4 “(A) a judgment, verdict, or order issued by the
5 court that is in that party's favor with respect to
6 that claim has become final, and that judgment, ver-
7 dict, or order is more favorable than any offer of
8 judgment that was made on that claim pursuant to
9 Rule 68 of the Federal Rules of Civil Procedure and
10 was not accepted; or

11 “(B) that party made an offer of judgment on
12 that claim pursuant to Rule 68 of the Federal Rules
13 of Civil Procedure that was not accepted, and a
14 judgment, verdict, or order issued thereafter by the
15 court that has become final is in another party's
16 favor with respect to that claim but is less favorable
17 than the offer of judgment.

18 “(2) An attorney's fee awarded under paragraph (1)
19 with respect to a claim shall be a reasonable attorney's
20 fee attributable to the claim, calculated on the basis of
21 an hourly rate which may not exceed that which the court
22 considers acceptable in the community in which the attor-
23 ney practices law, taking into account the attorney's quali-
24 fications and experience and the complexity of the case,

1 except that the fee awarded under paragraph (1) may not
2 exceed—

3 “(A) the actual cost incurred by the
4 nonprevailing party for an attorney’s fee payable to
5 an attorney for services in connection with the claim;
6 or

7 “(B) if no such cost was incurred by the
8 nonprevailing party due to a contingency fee agree-
9 ment, a reasonable cost that would have been in-
10 curred by the nonprevailing party for an attorney’s
11 noncontingent fee payable to an attorney for services
12 in connection with the claim.

13 “(3) Notwithstanding paragraphs (1) and (2), the
14 court in its discretion may refuse to award, or may reduce
15 the amount awarded as, an attorney’s fee under paragraph
16 (1) to the extent that the court finds special circumstances
17 that make an award of an attorney’s fee determined in
18 accordance with paragraph (1) unjust or inequitable.”.

19 **SEC. 3. HONESTY IN EVIDENCE.**

20 Rule 702 of the Federal Rules of Evidence (28 U.S.C.
21 App.) is amended—

22 (1) by inserting “(a) **In general.**” before
23 “If”, and

24 (2) by adding at the end the following:

1 “(b) **Adequate basis for opinion.** Testimony in
2 the form of an opinion by a witness that is based on sci-
3 entific knowledge shall be inadmissible in evidence unless
4 the court determines that such opinion—

5 “(1) is scientifically valid and reliable;

6 “(2) has a valid scientific connection to the fact
7 it is offered to prove; and

8 “(3) is sufficiently reliable so that the probative
9 value of such evidence outweighs the dangers speci-
10 fied in rule 403.

11 “(c) **Disqualification.** Testimony by a witness
12 who is qualified as described in subdivision (a) is inadmis-
13 sible in evidence if the witness is entitled to receive any
14 compensation contingent on the legal disposition of any
15 claim with respect to which the testimony is offered.

16 “(d) **Scope.** Subdivision (b) does not apply to crimi-
17 nal proceedings.”.

18 **SEC. 4. ATTORNEY ACCOUNTABILITY.**

19 (a) **TRUTH IN ATTORNEYS’ FEES.**—It is the sense
20 of the Congress that each State should require, under pen-
21 alty of law, each attorney admitted to practice law in such
22 State to disclose in writing, to any client with whom the
23 attorney has entered into a contingency fee agreement—

24 (1) the actual services performed for the client
25 in connection with such agreement, and

1 (2) the precise number of hours actually ex-
2 pended by the attorney in the performance of such
3 services.

4 As used in this subsection, the term “State” includes the
5 District of Columbia, the Commonwealth of Puerto Rico,
6 and the territories of the United States.

7 (b) AMENDMENT TO THE FEDERAL RULES OF CIVIL
8 PROCEDURE.—

9 (1) SANCTIONS.—Rule 11(c) of the Federal
10 Rules of Civil Procedure (28 U.S.C. App.) is amend-
11 ed—

12 (A) in the matter preceding paragraph (1)
13 by striking “may” and inserting “shall”;

14 (B) in paragraph (1)(A)—

15 (i) in the second sentence by striking
16 “, but shall” and all that follows through
17 “corrected”; and

18 (ii) in the third sentence by striking
19 “may” and inserting “shall”; and

20 (C) in paragraph (2) by striking the mat-
21 ter preceding subparagraph (A) and inserting
22 the following: “A sanction imposed for a viola-
23 tion of this rule shall be sufficient to deter rep-
24 etition of such conduct or comparable conduct
25 by others similarly situated, and to compensate

1 the parties that were injured by such conduct.
 2 Subject to the limitations in subparagraphs (A)
 3 and (B), the sanction may consist of an order
 4 to pay to the other party or parties the amount
 5 of the reasonable expenses incurred as a direct
 6 result of the filing of the pleading, motion, or
 7 other paper that is the subject of the violation,
 8 including a reasonable attorney's fee.''.
 9

10 (2) APPLICABILITY TO DISCOVERY.—Rule 11 of
 11 the Federal Rules of Civil Procedure is amended by
 12 striking subdivision (d).

13 **SEC. 5. NOTICE REQUIRED BEFORE COMMENCEMENT OF**
 14 **CIVIL ACTION.**

15 (a) IN GENERAL.—Chapter 99 of title 28, United
 16 States Code is amended by adding at the end the follow-
 17 ing:

18 **§ 1632. Notice required before commencement of civil**
 19 **action**

20 “(a) DISMISSAL OF CIVIL ACTION.—Except as pro-
 21 vided in subsection (c), the district court in which a civil
 22 action is commenced shall dismiss the action with respect
 23 to a defendant, without prejudice, if—

24 “(1) not later than 60 days after the action is
 25 commenced, the defendant files a motion to dismiss
 the action on the basis that the plaintiff failed to

1 comply with the requirement specified in subsection
2 (b); and

3 “(2) the plaintiff fails to establish that before
4 commencing the action the plaintiff complied with
5 such requirement.

6 “(b) REQUIREMENT.—Not less than 30 days before
7 commencing a civil action in a district court of the United
8 States, the plaintiff shall transmit (by 1st class mail, post-
9 age prepaid, or contract for delivery by any organization
10 that in its regular course of business physically delivers
11 correspondence as a commercial service to the public) to
12 the defendant (at an address reasonably calculated to pro-
13 vide actual notice to the defendant) a written statement
14 specifying the particular claims alleged in the action and
15 the amount of damages claimed in the action.

16 “(c) EXCEPTIONS.—Subsection (a) shall not apply
17 with respect to any civil action—

18 “(1) to seize or forfeit assets subject to forfeit-
19 ure;

20 “(2) commenced under title 11;

21 “(3) commenced to establish a receivership or
22 conservatorship;

23 “(4) based on the insolvency of the defendant,
24 or the need to liquidate assets of the defendant to
25 satisfy any requirement under Federal law;

1 “(5) if assets that are subject to the action or
2 that would satisfy a judgment in the action are like-
3 ly to be removed, dissipated, or destroyed by the de-
4 fendant;

5 “(6) if the defendant is likely to flee;

6 “(7) if prior written notice of the filing of the
7 action is required by any other law;

8 “(8) to enforce a civil investigative demand or
9 an administrative summons;

10 “(9) if the action is—

11 “(A) to foreclose a lien;

12 “(B) to obtain a temporary restraining
13 order or preliminary injunction; or

14 “(C) to prevent the fraudulent conveyance
15 of property;

16 “(10) if documents that may be evidence in the
17 action are likely to be destroyed by the defendant;
18 or

19 “(11) if the action involves exigent cir-
20 cumstances that compel immediate resort to the
21 court.

22 “(d) STATUTE OF LIMITATIONS.—

23 “(1) SUSPENSION BEFORE COMMENCEMENT OF
24 ACTION.—If the statute of limitations applicable to
25 a claim would expire in the 30-day period beginning

1 on the date the plaintiff transmits the notice re-
 2 quired by subsection (b), such statute shall be sus-
 3 pended—

4 “(A) during that 30-day period; or

5 “(B) during the 90-day period beginning
 6 on the date the plaintiff so transmits the notice
 7 if, during that 30-day period, the parties to the
 8 action so agree in writing.

9 “(2) FILING CIVIL ACTION AFTER DISMIS-
 10 SAL.—If—

11 “(A) a civil action is timely commenced in
 12 a district court with respect to a claim,

13 “(B) the action is dismissed under sub-
 14 section (a), and

15 “(C) the statute of limitations applicable to
 16 the claim expires before the expiration of the
 17 60-day period beginning on the date the action
 18 is dismissed,

19 then the plaintiff in the action may commence a civil
 20 action based on the claim during that 60-day period
 21 notwithstanding the statute of limitations.”.

22 (b) CONFORMING AMENDMENT.—The table of sec-
 23 tions at the beginning of chapter 99 of title 28, United
 24 States Code, is amended by adding at the end the follow-
 25 ing:

“1632. Notice required before commencement of civil action.”.

1 **SEC. 6. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

2 (a) EFFECTIVE DATE.—Subject to subsection (b),
3 this Act and the amendments made by this Act shall take
4 effect on the first day of the first month beginning more
5 than 180 days after the date of the enactment of this Act.

6 (b) APPLICATION OF AMENDMENTS.—

7 (1) The amendments made by sections 2 and 5
8 shall apply only with respect to civil actions com-
9 menced after the effective date of this Act.

10 (2) The amendments made by section 3 shall
11 apply only with respect to cases in which a trial be-
12 gins after the effective date of this Act.

○